

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

THOMAS ZELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Defendant.

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No. 4:16-CV-196 JAR

**MEMORANDUM AND ORDER**

This matter is before the Court on Petitioner's Motion for Appointment of Alternate Counsel (Doc. No. 11) and Motion to Strike as Premature and Non-Responsive or in the Alternative, Motion to Hold Above-Captioned Cause in Abeyance Until Supreme Court Decides *Welch v. United States* (Doc. No. 12).

There is neither a constitutional nor a statutory right to have appointed counsel in § 2255 proceedings. See *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); 28 U.S.C. § 2255(g). In determining whether the appointment of counsel is necessary, the court should consider whether petitioner has presented a non-frivolous claim, the legal and factual complexity of the case, the petitioner's ability to investigate and present the claim, and any other relevant factors. *McCall v. Benson*, 114 F.3d 754, 756 (8th Cir. 1997). The Court has carefully examined the claims raised by Petitioner in his § 2255 motion and reviewed the underlying criminal file. Based on this review, the Court concludes that appointment of counsel is not necessary in this case. Petitioner's petition is not factually or legally complex, and he has demonstrated that he understands the issues and is capable of adequately representing himself. For these reasons, the motion for appointment of counsel will be denied. See *Hoggard v. Purkett*, 29 F.3d 469, 472 (8th Cir. 1994).

Petitioner's motion to hold this matter in abeyance will be denied as moot since the United States Supreme Court decided Welch v. United States, 136 S. Ct. 1257, on April 18, 2016.


Accordingly,

**IT IS HEREBY ORDERED** that Petitioner's Motion for Appointment of Alternate Counsel [11] is **DENIED**.

**IT IS FURTHER ORDERED** that Petitioner's Motion to Strike as Premature and Non-Responsive or in the Alternative, Motion to Hold Above-Captioned Cause in Abeyance Until Supreme Court Decides Welch v. United States [12] is **DENIED** as moot.

**IT IS FURTHER ORDERED** that Petitioner is granted sixty (60) days to file a reply to the Government's Response in Opposition to Petitioner's § 2255 motion, up to and including **Tuesday, October 11, 2016**.

Dated this 9<sup>th</sup> day of August, 2016.

  
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JOHN A. ROSS  
UNITED STATES DISTRICT JUDGE